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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.390 of 2007

Allahabad, this the 4th day of July, 2008

Hon'ble Mr. N.D. Dayal, Member-A

Hemraj, S/o late Gangadeen, R/o House No. 1075,
Masiha Ganj, Malika Ki Toriya, Sipri Bazar, Jhansi.

...Applicant.

(By Advocate: Shri S.M. Ali)

Versus

1. Union of India, through General Manager,
N.C.R., Allahabad.
2. The Divisional Railway Manager (P), N.C.R.,
Jhansi.

...Respondents.

(By Advocate: Sri K.S. Saxena)

ORDER

The applicant in this case is seeking a direction to the respondents to reconsider his case under Dying in Harness Rules and issue order of compassionate appointment vice his father (Late Sri Gangadeen) in appropriate class in a time bound manner. He also prays for quashing of impugned order dated 14.7.2006 addressed by NCR Railway, Allahabad to DRM, N.C.R., Jhansi stating that the case of the applicant could not be agreed to as well as letter dated 20.7.2006 written by DRM Office, Jhansi to the applicant informing him that his father was medically unfit for all class at the age of 59 years, 8 months and 24 days and the applicant's case for compassionate appointment was considered by the competent authority, but could not be agreed to.

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2. The applicant says that his father was suffering from Hepatocellular Carcinoma with Metastatic disease and was declared unfit for all categories by medical certificate dated 15.3.2005. It is stated that his father was due for retirement on 30.6.2005, but died in harness on 16.5.2005 while in service.

3. When the applicant's mother applied for compassionate appointment in his favour, Welfare Officer gave a finding supporting his case stating the family circumstances and recommending the matter be forwarded to the General Manager for sanction. The applicant complained that the DRM, Jhansi sent his case to Headquarters at Allahabad mentioning the wrong date of retirement as 24.3.2005 instead of 30.6.2005, because of which on the wrong presumption that his father was not in service at the time of death on 16.5.2005, applicant's case was rejected in terms of relevant rules.

4. In their Counter affidavit, the respondents have stated that in terms of rules, once the applicant's father was found medically unfit for any category of job, he was to be medically invalidated and retired. In support thereof, they have enclosed at Annexure CR-I, RBE 113/2003 (Suppl. Circular no.6 to Master Circular 25), which is regarding absorption of Persons with Disabilities under the Act 1985, who have been disabled or have become medically decategorised. This circular makes it clear that the Railway Servant declared totally invalidated being not fit for any alternative post even in lowest medical category should be declared invalid and retired from service as per the procedure. The respondents have with leave of the Court submitted certain documents from original records. The documents include the medical report of

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the father of the applicant which states that he was examined by Railway Board on 18.1.2005 at N.C.R. Hospital, Jhansi and declared invalid for further service for all medical categories. There is another document which appears to be memorandum dated 24.3.2005 from the office of DRM, Jhansi stating that in view of medical report by which the applicant's father {late Gangadeen} was declared unfit for service for all categories, Sri Gangadeen is retired from service with immediate effect. Another document is with regard to employment on compassionate appointment and is dated 3.9.1983. As per these instructions, appointment on compassionate grounds may be offered in the case of an employee who becomes medically decategorized for the job which he is holding and no alternative job with same emoluments is available. It was further decided on demand by staff side that where a medically decategorised employee is offered alternative appointment, but he chooses retirement from service, compassionate appointment of any eligible ward, if so requested, can be considered by the competent authority. However, if the employee has less than three years of service before superannuation, the personal approval of G.M. has to be obtained before offer of appointment on compassionate grounds is made. The respondents have further enclosed a letter dated 13.1.2005 which says that in view of increase in the age of superannuation from 58 to 60 years, the three years before superannuation would be taken with reference to age of 57 years and not 55 years as was the case earlier.

5. In the above background, the respondents have submitted that Late Gangadeen having already been retired on 24.3.2005 in view of his medical invalidation and in accordance with the relevant rules, the applicant could not claim appointment on compassionate grounds under Dying-in-Harness Rules

because late Gangadeen died on 16.5.2005 after he had been retired on 24.3.2005 and was no longer in service on the date of his death.

6. In his Rejoinder Affidavit, the applicant has gone over the various grounds already taken by him in the O.A. and disputed the stand of the respondents that his father retired on 24.3.2005. It is submitted that the father was bread winner of the family and due to 'Cancer' treatment which he was receiving the financial resources of the family had been depleted, which was reflected in the report of Welfare Officer.

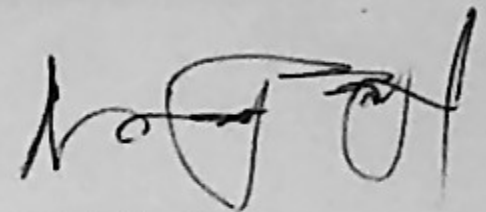
7. I have heard the learned counsel for both sides and perused the pleadings on record. The material on record shows that even though the date of retirement of late Gangadeen was 16.5.2005 with reference to his date of birth, there is nothing to contradict the stand taken by the respondents that he had been retired by order dated 24.3.2005 in terms of Railway Board Circular no. 113/2003. As such the claim of the applicant on the basis of dying-in-harness provision would not be tenable.

8. It is true that late Gangadeen had only few months of service left when he was retired on 24.3.2005. The competent authority appears to have considered the case for compassionate appointment, but not agreed. The impugned orders do not reveal whether such decision was taken at the General Manager level. The circumstances of the applicant's father who was medically invalidated and retired from service are not specifically mentioned in the provisions contained in the documents on record which only envisage situations where alternative employment could be ^{availed} ~~applied~~ by the employee. Besides, the impugned orders are cryptic and indicate no reasons as to why the applicant's

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request was not agreed to, thus depriving him of the opportunity to know the mind of the competent authority as applied to his circumstances, wherein the bread winner had according to the applicant left the family in distress. As such the applicant is denied opportunity in violation of principles of natural justice to argue his plea adequately.

8. In the above situation, the respondent no.1 is directed to consider the case of the applicant for appointment on compassionate grounds and inform him by a speaking order of the decision taken within a period of three months from the date of receipt of a certified copy of this order. No costs.



MEMBER-A

GIRISH/-